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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 JONATHAN P. DUENAS,

7 Petitioner,

8 v.

9 RON HAYNES,

10 Respondent.

Case No. 3:18-cv-06027-RBL-TLF

REPORT AND
RECOMMENDATION DENYING
PLAINTIFF'S APPLICATION TO
PROCEED *IN FORMA PAUPERIS*

Noted for March 15, 2019

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12 This case has been referred to Magistrate Judge Theresa L. Fricke pursuant to 28 U.S.C.
13 § 636(b)(1) and Local Rule MJR 3 and 4. Before the Court is petitioner's application to proceed
14 *in forma pauperis*. Dkt. 1. The Court should deny that application. Petitioner has sufficient funds
15 to pay the \$5.00 filing fee.

16 DISCUSSION

17 The district court may allow a litigant to proceed IFP upon the submission of a proper
18 affidavit of indigency. *See* 28 U.S.C. § 1915(a). Yet IFP status is a privilege not a right, and the
19 district court has discretion to deny such status. *O'Laughlin v. Doe*, 920 F.2d 614, 616 (9th Cir.
20 1990); *Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984). The privilege of proceeding
21 with a cause of action IFP should be permitted "only in exceptional circumstances." *Wilborn v.*
22 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

23 By requesting the court to proceed *in forma pauperis*, petitioner is asking the government
24 to incur the filing fee because he is unable to afford the costs necessary to proceed with his cause

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1 of action. Petitioner's prison trust account statement shows he has average monthly receipts of
2 \$105.67 and an average spendable balance of \$18.25. Dkt. 1, p. 3. Given that the filing fee for
3 *habeas corpus* petitions is \$5.00, petitioner has sufficient funds in his prison trust account to pay
4 that fee.

5 RECOMMENDATION

6 It is reasonable for petitioner to incur the costs to proceed with his petition. The Court
7 thus should deny petitioner's application to proceed *in forma pauperis*, and order him to pay the
8 filing fee **within thirty (30) days** of the Court's order.

9 The parties have **fourteen (14) days** from service of this Report and Recommendation to
10 file written objections thereto. 28 U.S.C. § 636(b)(1); Federal Rule of Civil Procedure (FRCP)
11 72(b); *see also* FRC P 6. Failure to file objections will result in a waiver of those objections for
12 purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed
13 by Fed. R. Civ. P. 72(b), the Clerk is directed set this matter for consideration on **March 15,**
14 **2019**, as noted in the caption.

15 Dated this 25th day of February, 2019.

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Theresa L. Fricke
19 United States Magistrate Judge
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